

## Internal Revenue Service

Number: **201017002**

Release Date: 4/30/2010

Index Number: 382.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO1

PLR-132696-09

Date:

January 11, 2010

In Re:

Parent =

Business A =

First Tier Entity =

State X =

Country Y =

Year 1 =

Date 2 =

Date 3 =

Class N =

Class O =

Higher Tier Entity =

Dear

This letter responds to your ruling request, dated July 8, 2009 regarding the application of section 382(l)(3)(C) of the Internal Revenue Code to Parent. We received additional information in letters dated October 20, 2009, November 5, 2009, and January 8, 2010. The information submitted is summarized below.

Parent, a State X corporation, is the common parent of an affiliated group that files a U.S. consolidated federal income tax return on a calendar year basis. The consolidated group is engaged in Business A. The group has been a loss group within the meaning of § 1.1502-91(c)(1) of the Income Tax Regulations because Parent has a consolidated net operating loss.

By attribution, First Tier Entity owns all the stock of Parent. First Tier Entity is a Country Y corporation whose common stock is publicly traded. First Tier Entity was formed in Year 1 through a merger of two other corporations. Since Year 1, First Tier Entity has had one class of common stock. It also has classes of hybrid securities that taxpayer represents is preferred stock described in § 1504(a)(4) and therefore is not stock under § 1.382-2(a)(3)(i). From Year 1 until Date 2, First Tier Entity also had Class N, a class of preferred stock that the taxpayer believes is stock within the meaning of § 1.382-2(a)(3)(i).

For purposes of determining owner shifts under section 382, Parent has identified Higher Tier Entity as a higher tier entity within the meaning of § 1.382-2T(f)(14). On Date 3, First Tier Entity issued Class O to Higher Tier Entity. The taxpayer believes Class O is stock within the meaning of § 1.382-2(a)(3)(i), and that immediately after the issuance Higher Tier Entity had a percentage stock ownership in First Tier Entity within the meaning of § 1.382-2T(f)(24) that is large enough to represent an indirect ownership in Parent of more than five percent.

Parent is concerned that a significant owner shift to First Tier Entity resulted from its issuance of Class O to Higher Tier Entity. Under the stock attribution rules in § 1.382-2T(h)(2), the shareholders of First Tier Entity are deemed to own all the stock of Parent, and therefore an ownership change of First Tier Entity would produce an ownership change in Parent. Parent requests a ruling that it may, under the "Hold Constant Principle" (defined below), factor out changes in proportionate ownership of Parent's stock which are attributable solely to fluctuations in the relative fair market values of different classes of stock under § 382(l)(3)(C) to determine the increase in percentage ownership of each of its 5-percent shareholders on each of its testing dates beginning on Date 3 and identify which such testing dates are change dates for

purposes of § 382. For purposes of this ruling letter, the Hold Constant Principle is defined as follows:

On any testing date, in determining the ownership percentage of any 5-percent shareholder, the value of each share of such shareholder's stock, relative to the value of all other shares of the Taxpayer's stock, shall be considered to remain constant since the Acquisition Date of that share, except as properly adjusted to account for the dilutive effect of subsequent issuances or the accretive effect of subsequent redemptions of other shares of the Taxpayer's stock. The issuance of a second class of stock--(i) establishes the Acquisition Date for the issued shares, and (ii) generally establishes the Acquisition Date for shares of the previously existing class, but would not do so if there had recently been outstanding a previous second class of stock. For stock acquired before the beginning of any given testing period, the Taxpayer may use as its Acquisition Date the date that begins the testing period in lieu of its actual acquisition date(s), provided it does so with respect to every testing period and with respect to each and every share of stock so acquired.

#### Representation

Taxpayer makes the following representation:

To the best of the Taxpayer's knowledge, the amount of tax liability on any of Taxpayer's federal income tax returns filed to date would not be affected by whether or not Taxpayer takes into account the effect of fluctuations in the relative values of different classes of stock for purposes of determining owner shifts and ownership changes under section 382.

#### Ruling

Based solely on the information submitted, we rule as follows:

1. Taxpayer may apply a method employing the Hold Constant Principle (the "Method") to determine the increase in percentage ownership of each of its 5-percent shareholders on each of its testing dates on or after Date 3 (and to identify which such testing dates are change dates) for purposes of section 382, provided that--(i) Taxpayer takes a return position consistent therewith on its tax return for its first taxable year in which the application of the Method would affect the amount of its tax liability, and (ii) if employment of the Method does not result in an ownership change during said first taxable year, Taxpayer continues to apply the Method thereafter through the testing date on which the Method first results in an ownership change. See section 382(l)(3)(C).

2. In applying the Method, a value-for-value recapitalization or conversion of stock of a corporation into other stock of the same corporation shall be disregarded, and the exchanging shareholder shall be considered to have acquired such newly issued stock as of the date it acquired the stock exchanged therefor.

### Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, or any transaction not discussed or referenced in this letter. In particular, no opinion is expressed as to whether or not: (i) Parent had a testing date on any given date; (ii) Parent had an ownership change on any testing date (under either the methodology set forth at §1.382-2T(c)(1) or the Hold Constant Principle); or (iii) any exchange of stock pursuant to a recapitalization or a conversion represented a value for value exchange. One or more rulings given in this letter deal with issues that have not yet been fully addressed in published guidance. See section 11.04 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 49, regarding the circumstances, including published guidance, which may result in the revocation or modification of a letter ruling.

### Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

---

Mark Weiss  
Assistant to the Chief, Branch 1  
Office of Associate Chief Counsel  
(Corporate)